IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 243 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAGANBHAI K PATEL AND OTHERS
Versus
STATE OF GUJARAT

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Appearance :
MR PJ VYAS for Petitioner
MR SP HASURKAR, ASST. GOVERNMENT PLEADER for Respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/10/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner has challenged the order dated 25.08.94 passed by the Gujarat Revenue Tribunal [for short, the Tribunal], in Revision Application No. TEN. B.S. No. 362 of 1993 whereby the Tribunal rejected the Review Application filed by the petitioner.

2. On behalf of the petitioner, an application under section 8 of the Gujarat Agricultural Lands Ceiling Act, 1960 [for short, the Act] on 22.9.1976 seeking a declaration that the transfer in respect of survey No. 85 admeasuring 28 Acres 26 Gunthas of land at village Malvan in Mangrol Taluka was not made with a view to defeat the object of the Act and that it was a bonafide transaction. After two rounds of litigation which reached upto the Tribunal, Deputy Collector, Olpad Sub Division, Surat in Ceiling Remand Appeal No. 2 of 1992 by his order dated 22.3.1993, ultimately came to the conclusion that the aforesaid transaction was made in order to defeat the object of the Act and it is not a bonafide transaction. The Deputy Collector found that in order to defeat the provisions of the amended Agricultural Land Ceiling Act, 1972 the aforesaid transaction is made on 17.02.72 by making partition in favour of 7 daughters. The Deputy Collector, on appreciation of evidence found hat the petitioner has failed to produce any evidence to show that the possession of the land in question is with the daughters or that the transferees have

cultivated the land. Against the aforesaid order of the Deputy Collector, the petitioner preferred aforesaid Revision Application No. 362 of 1993 before the Tribunal by invoking provisions of section 38 of the Act. The Tribunal, after considering the evidence on record came to the conclusion that the transaction in question is not bonafide. The Tribunal, after considering the facts and circumstances of the case, came to the conclusion that the Deputy Collector has considered the entire aspect in its proper prospective and the said decision of the Deputy Collector was found to be proper by the Tribunal. The Tribunal found that the transfer in favour of 7 daughters shown as mutation entry No. 542 dated 17.2.1972 was not bonafide and it was done only with a view to defeat the object of the Act. The Tribunal has considered this aspect in detail. In paragraph 6, it is observed as under:-

> “6. I have carefully considered the submissions of the two learned advocates and also the material part of the record. I am not convinced with the submissions of Shri Nagarsheth for the applicants that the money required to be paid to Chhotubhai Bhatt was obtained from the families of the two sons-in-law of the two brothers on 26.2.70. There is nothing in the Sotakhat (pages 35-37) to show as to how the money was obtained

from each of the families of each of the sons-in-law. In other words, one cannot make out as to how much money was lent by the family of son-in-law Kalyanbhai Chhitubhai and how much money was similarly lent by the family of the other son-in-law Ambubhai Dahyabhai. In a Satakhat of this nature, where the money is alleged to have been obtained from 'families', obviously the names of such persons who have made the payment would have definitely found clear mention. Here in this case, such details are kept undisclosed, for whatever reasons. No facts have been ever brought on record as to whether repayment of the moneys obtained from the families of the two sons-in-law has been made by Maganbhai Keshavbhai and Nagarbhai Keshavbhai within ten years, that is to say upto 1980 or so, or not. If the repayment is not made, naturally the sons-in-law would have made further payment and got the lands entered in their names and the names of the seven daughters would have been got deleted. Even this conditional sale or Satakhat has not been vouchsafed by any mutation entry at the relevant time in 1970. Not only that, mutation entry No. 544 dated 17.2.72 bringing the names of the seven

daughters on record in V.F.6 does not even make mention that there was ever a Satakhat between Maganbhai Keshavbhai and Nagarbhai Keshavbhai on one side and the two sons-in-law on the other side. This aspect is important because the Satakhat makes a further recitation “for the safety of your money, we have handed over possession of the land to you”. This would clearly indicate that the possession of the land was also handed over the two sons-in-law on the date of the Satakhat made on 26.2.70. How would then it be legal, proper and fair for Maganbhai Meshavbhai and Nagarbhai Keshavbhai to straightway put the land in the names of the 7 daughters?”.

3. Mr. Vyas, learned advocate for the petitioner submitted that the authority below has committed an error of law in appreciating the evidence on record. However, Mr. Vyas is not in a position to substantiate his submission. Considering the reasonings given by the Deputy Collector as well as the Tribunal, in my view, it cannot be said that either the Deputy Collector of the Tribunal has committed any error of jurisdiction which is required to be corrected in exercise of its jurisdiction under Article 226 of the Constitution of India. Cogent reasons have been given by the Deputy Collector and the Tribunal for coming to the

conclusion that the so called transfer is made only with a view to defeat the object of the Act and in order to come out from the rigors of the Act. The finding of fact recorded by both the authorities cannot be said to be perverse or contrary to the evidence on record. In the circumstances, in its limited jurisdiction, this Court would not like to interfere. Even otherwise, considering the reasonings given by the authorities below, in my view, no other view except the one taken by the Deputy Collector and Tribunal can be taken. Under the circumstances, I do not find any substance in the petition; hence rejected. Rule is discharged. No order as to costs.

[P. B. MAJMUDAR, J.]

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